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DISTRICT COURT

CLARK COUNTY, NEVADA

YVETTE WEINSTEIN, CHAPTER 7
TRUSTEE OF THE ARIEL JAIME
BANKRUPTCY ESTATE,
(8039 Anasazi Ranch Drive)

Plaintiff,

v.

MORTGAGE CAPITAL ASSOCIATES,
INC., Foreign Corporation;
EMC MORTGAGE CORPORATION,
Foreign Corporation, BAC HOME LOANS
SERVICING, LP., Foreign Limited
Partnership; ROE Rating Company;
DOES I-100; inclusive; ROE ENTITIES
1-100; ROE CORPORATIONS 1-100,
inclusive,

Defendants.

CASE NO. 2:10-cv-01551-PMP-PAL

MOTION TO CONSOLIDATE

...

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1 Defendant EMC Mortgage Corporation ("EMC"), by and through its counsel of record,
 2 hereby files this Motion to Consolidate in order to consolidate the same case that was assigned to
 3 two different judges as a result of two separately filed requests for removal.

4 DATED this 22nd day of September, 2010.

5 SMITH LARSEN & WIXOM

6 

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 15 EMC Mortgage Corporation

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I.

14 STATEMENT OF FACTS

15 The subject Complaint herein was filed in Clark County District Court on August 13, 2010.
 16 (See Exhibit A.) The allegations in the Complaint arise of out of a residential mortgage loan
 17 transaction entered into by Plaintiff on or around September 2006. The Complaint contains
 18 unsubstantiated claims against Defendants for Breach of Contract, Breach of Contractual Covenant
 19 of Good Faith, Violation of NRS 598 D Prohibiting Unfair Lending Practices, Consumer Fraud,
 20 Deceptive Trade Practices, Fraud, Constructive Fraud, Negligent Misrepresentation, Negligence,
 21 Tortious Interference with Contract, and Civil Conspiracy.

22 Unbeknownst to EMC when it filed for removal on Monday, September 13, Co-Defendant
 23 BAC Home Loans Servicing, L.P. ("BAC"), had filed its Petition For Removal on Saturday,
 24 September 11, 2010; and Case No. 2:10-cv-01551-PMP-PAL was created and assigned to the Hon.
 25 Philip M. Pro and Magistrate Judge Peggy A. Leen. (See Exhibit B.) Thus, upon EMC's Petition
 26 For Removal of the same case, a second, duplicative case, Case No.2:10-cv-01562-KJD-LRL, was
 27 created and assigned to the Hon. Kent J. Dawson and Magistrate Judge Lawrence R. Leavitt. The
 28 two removed actions are, in reality, the same case, and thus necessarily involve the same plaintiff,
 debtor complaint, claims, allegations, loan transaction, and defendants.

II.

LEGAL ARGUMENT

Federal Rule of Civil Procedure 42 states:

Rule 42. Consolidation; Separate Trials

(a) **Consolidation.** If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Here, the Court should consolidate the above-mentioned actions because they are the same case and necessarily satisfy all requirements for consolidation. EMC removed the first business day after Co-Defendant removed the action, without realizing the prior removal. As such, in the interests of judicial economy, and to avoid unnecessary cost or delay, EMC moves this honorable Court to consolidate these actions, and to assign the matter to the first assigned judge and magistrate judge.


III.

CONCLUSION

Based on the foregoing, EMC respectfully requests that its Motion for Consolidation be granted in its entirety, and that the dual cases referred to herein be consolidated into one action, the first action filed on September 11, 2010 bearing case number 2:10-cv-01551-PMP-PAL. This motion, seeking the same relief, is being contemporaneously filed in case number 2:10-cv-01562-KJD-LRL as well.

DATED this 22nd day of September, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of September, 2010, a true copy of the foregoing **Motion to Consolidate** was electronically filed via the Court's CM/ECF system and either served electronically or mailed, postage prepaid, as indicated, to the following:

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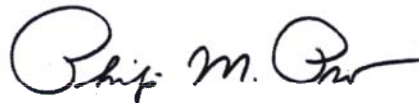
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an employee of Smith Larsen & Wixom

IT IS SO ORDERED.



PHILIP M. PRO
UNITED STATES DISTRICT JUDGE

DATED: October 12, 2010.